

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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)
Amendment of the Commission's Rules)
To Permit Flexible Service Offerings)
In the Commercial Mobile Radio Services)

WT Docket No.
96-6

INITIAL COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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March 1, 1996

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Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.49, 1.415, and 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted January 24, 1996 and released January 25, 1996, in the above-captioned proceeding. Generally, NARUC opposes the expansion of the definition of CMRS to include fixed wireless local loop services.

In support of its comments, NARUC states as follows:

I. BACKGROUND

NARUC is a quasi-governmental nonprofit organization founded in 1889. NARUC includes within its membership those governmental bodies of the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, which engage in the regulation of carriers and utilities.

NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, NARUC is composed of the State officials charged with the duty of regulating the telecommunications common carriers within their respective borders. As such, they have the obligation to assure the establishment of such telecommunications services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable. As discussed below, the FCC's proposed action in this docket will clearly impact upon this obligation.

At ¶ 19, mimeo at 11-12, the FCC contends that PCS providers "intend to integrate mobile, wireless fixed, wireline networks, and cable facilities into seamless packaged offerings that could span several states." Elsewhere in the NPRM, the FCC, inter alia, defines "wireless local loop" as the "path between the subscriber and the first point of switching or aggregation of traffic" and invites parties to comment on its proposal to "treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider, so long as the carrier otherwise offers interconnected, for profit mobile service to the public on licensed CMRS spectrum." NPRM at ¶ 20. Moreover, as the FCC notes, this NPRM is intended to promote competition between wireless and wireline services. NPRM at ¶ 3. Accordingly, it appears the FCC's proposal could impact facilities currently subject to State Commission jurisdiction both directly and indirectly.

III. DISCUSSION

The Communications Act defines "mobile service" as a "radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves and includes (1) both one-way and two-way radio communication services, (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding." 47 U.S.C. § 153(n) (1993).

Historically, the FCC has interpreted this statutory definition of mobile services to include auxiliary, ancillary, secondary, or incidental fixed services. However, the FCC has excluded services that are solely fixed in nature.¹ Specifically, the FCC already determined that a mobile service station capable of transmitting while the platform is moving is included in the definition of mobile services. Platforms that cannot be moved while services are offered are not. Thus, satellite services provided to or from a transportable platform that cannot be used in a mobile mode are excluded from the definition of mobile services².

¹ See, *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1424-1425, at ¶ 38 (1994) ("Second Report and Order").

² Id., Compare, NPRM at ¶ 3.

Moreover, in defining Basic Exchange Telephone Radio Service ("BETRS"), the FCC agreed that "the substitution of a [fixed] radio loop for a wire loop in the provision of BETRS does not constitute mobile service...this service was intended to be an extension of intrastate basic exchange telephone service. Thus the [fixed] radio loop merely takes the place of wire or cable."³

In the face of these prior determinations, and the recent wholesale amendment of the Communications Act which, significantly, allowed continued State authority over intrastate wireline services, this NPRM suggests that if a concededly stationary "wireless loop" integrated with landline facilities is offered "as an integral part of the CMRS services offered by a CMRS provider," that service should be classified as CMRS, "so long as the carrier otherwise offers interconnected, for profit mobile service to the public."

Currently, State regulation of CMRS and wireline services differs significantly. Thus, if upheld on appeal, the NPRM proposal has the undesirable impact of favoring a particular technology for local access. While NARUC supports the efficient use of technology in the provision of local exchange service, we oppose Federal policy that is not technology neutral and has the impact of favoring deployment of one technology over another.

³ Id. at ¶ 38, citing *Basic Exchange Telecommunications Radio Service*, Report and Order, 3 FCC Rcd 214, 217 (1988) {Emphasis Added}.

In addition, it does not appear the posed expansion of the definition of CMRS to include fixed wireless local loop services is necessary to allow innovative use of spectrum. Under the FCC's view of 47 U.S.C. § 303, as discussed in the NPRM at ¶ 7, the FCC could allow companies to use the spectrum in the manner suggested without sweeping the interconnected fixed services under the "CMRS" rubric. Under such an approach, the fixed services offered would remain subject to the existing State regimes applicable to such services.

Moreover, expanding the limited incidental "fixed use" exceptions previously allowed in the manner suggested by the NPRM, threatens the States' regulatory flexibility which is needed to implement local competition and pricing policies consistent with local market conditions.

VI. CONCLUSION

NARUC supports technology neutral regulation of services and, as explained, supra, opposes the expansion of the definition of CMRS to include fixed wireless local loop services and the resulting preemption of State authority over intrastate fixed wireless communications as bad public policy.

Respectfully submitted,



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Appendix A - Resolution Opposing Federal Preemption Regarding Intrastate Fixed Wireless Communications Services

WHEREAS, The Federal Communications Commission (FCC) has issued a Notice of Proposed Rulemaking in WT Docket No. 96-6 to permit fixed wireless service offerings by commercial mobile radio service (CMRS) providers; and

WHEREAS, The FCC has, to date, interpreted the statutory definition of mobile services to include auxiliary, ancillary, secondary, or incidental fixed services but to exclude those services that are solely fixed in nature (e.g., Basic Exchange Telephone Radio Service (BETRS)); and

WHEREAS, The FCC's personal communications service (PCS) rules require that a carrier must seek a waiver to offer primarily fixed services, demonstrating that such service best meets the demands of an area; and

WHEREAS, The FCC proposes that broadband CMRS providers be authorized to offer fixed wireless local loop service and possibly other fixed wireless services; and

WHEREAS, The FCC proposes to treat fixed wireless local loop services as an integral part of the CMRS services offered by a CMRS provider; and

WHEREAS, The FCC proposes that CMRS regulation continue to apply if a carrier offers both fixed wireless local loop services and interconnected, for-profit mobile services; and

WHEREAS, The FCC seeks comments on the extent to which the FCC's universal service programs should be modified to encompass, or impose obligations on, CMRS providers that offer the equivalent of local exchange service; and

WHEREAS, Fixed wireless local loop services would be jurisdictionally separable, with the vast majority being intrastate; now, therefore, be it

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Winter Meeting in Washington D.C., supports the efficient use of technology in the provision of local exchange service; and be it further

RESOLVED, That NARUC support technology neutral regulation of services and opposes the expansion of the definition of CMRS to include fixed wireless local loop services and FCC preemption of States' authority over intrastate fixed wireless communications which is not technology neutral regulation of services; and be it further

RESOLVED, That the NARUC General Counsel file comments with the FCC conveying these NARUC positions.

Sponsored by the Committee on Communications
Adopted February 28, 1996

**Appendix B - Resolution Regarding the NARUC Policy Principles
for the Implementation of the "Telecommunications
Act of 1996"**

WHEREAS, The "Telecommunications Act of 1996" (this Act) has been signed into law and includes as its goals the timely and efficient implementation of State and Federal procompetitive policies; and

WHEREAS, This Act grants specific authority to the Federal Communications Commission (FCC) and the States to develop procompetitive policies consistent with this Act; and

WHEREAS, In reaffirming the importance of federalism, this Act preserves State authority to prescribe local competition policies based on local market conditions, to the extent provided for under this Act; and

WHEREAS, This Act provides for a legitimate FCC role to prescribe policies which are cognizant of local policies and concerns; and

WHEREAS, The FCC will engage in a series of rulemakings, commencing immediately, to implement its specific responsibilities under this Act; and

WHEREAS, The NARUC views the following policy principles as critical for the achievement of this Act's goals:

- Consistent with the recognition of State authority over intrastate telecommunications contained in Section 152 of the Act and to meet the goals of the law,
- To ensure the expeditious development of competition in all telecommunications markets and avoid regulatory gridlock, general national principles should be articulated and a Federal one-size-fits-all policy should be avoided.
- Consistent with this Act's intent to transition towards a market-based telecommunications industry, Federal policies should complement, and not impede or duplicate, State efforts to foster local competition.

- To avoid creating an opportunity for forum shopping by the industry, the FCC and the States should work together to develop policies which are compatible and allow for State creativity and innovation to facilitate competition and preserve universal service; and

WHEREAS, The interconnection proceeding by the FCC will be the first major implementation proceeding under this Act that could have significant ramifications for the development of local competition; now, therefore, be it

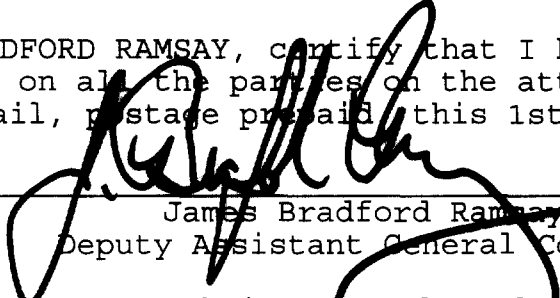
RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1996 Winter Meetings in Washington, D.C., authorizes the agents of the NARUC to advocate these principles to the FCC and Federal policy makers; and be it further

RESOLVED, That the NARUC looks forward to working closely with Federal policy makers to promptly undertake and implement the provisions of this Act to achieve the key objectives of the law: local competition and universal service.

Sponsored by the Committee on Communications
Adopted February 28, 1996

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that I have served a copy of the foregoing on all the parties on the attached service list by 1st class mail, postage prepaid, this 1st day of March, 1996.


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